

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(3)

O.A. NO: 177/92

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~~XXXXXX~~

DATE OF DECISION 21.7.1992

Shri J.G. Jadhav

Petitioner

Shri V.B. Rairkar

Advocate for the Petitioners

Versus

Union of India & Others.

Respondent

Shri R.K. Shetty

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. T.C. RELEY, MEMBER (J).

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

ND

T. C. Reley
Member (J).

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

(4)

O.A.177/92.

Shri J.G. Jadhav.

.. Applicant.

Vs.

Union of India, through
Additional Director General,
of Meteorology, Pune.

.. Respondent

Coram : Hon'ble Shri T.C. Reddy, Member (J).

Appearances:

Shri V.B. Rairkar, Counsel
for the applicant.

Shri R.K. Shetty, Counsel
for the Respondents.

ORAL JUDGMENT :

Dated : 21.7.1992.

[Per : Hon'ble Shri T.C. Reddy, Member (J)]

This application is filed by the applicant

- (1) to direct the second respondent to equate the pay of the applicant with that of respondent Nos. 3 to 9
- (2) to direct the respondent to pay the arrears on such fixation of the salary of the applicant (3) for costs of this application.

The facts giving rise to this O.A. in brief are as follows. The applicant was appointed as Observer on 21.3.1962. In the year 1967 the applicant was promoted as senior Observer. The applicant was promoted as Scientific Assistant with effect from 17.7.1979. It is the grievance of the applicant that Respondent Nos. 3 to 9 who are Scientific Assistants who are juniors to the applicant are drawing more pay than the applicant. So the applicant has filed the present application for the reliefs as indicated above.

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Counter is filed by the respondent opposing this O.A.

In the counter filed by the respondents, it is maintained that the applicant is making an attempt to take undo advantage of his period of absence for the fixation of pay ~~viz-a-viz~~ his juniors. It is also further maintained in the counter of the respondent that the applicant is not entitled to take advantage of the absence under the rules for fixation of his pay on regular promotion. It is also further stated in the counter that the applicant cannot get the benefit of the period of absence owing to his own fault of long absence during the period of occurrence of vacancies in higher posts.

The following are admitted facts in this case.

The applicant while working as Senior Observer went on earned leave from 27.3.1979 to 16.7.1979. Actually the applicant was promoted as Scientific Assistant with effect from 29.3.1979. As the applicant was availing earned leave from 27.3.1979 to 16.7.1979, the applicant joined in the promoted post of Scientific Assistant with effect from 17.7.1979. It may be pointed out here that the promotion of the applicant as Scientific Assistant was on regular basis.

~~Even though~~ The applicant had pleaded that the respondent Nos. 3 to 9 are his juniors and the said fact is not in dispute. For the purpose of deciding this O.A., it will be sufficient to consider and compare the case of ^{the} applicant for purpose of giving appropriate relief to the applicant.

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In the counter filed by the respondents, the statement showing service particulars and related junior employees are brought out and the same is appended to counter which is Ex.R-1. It is from Ex-R-1 that we got the particulars of the promotion of the applicant with effect from 23.3.1979 as Scientific Assistant though he had joined the said post from 17.7.1979 which promotion as already pointed out was a regular promotion to the applicant.

In fact that the 3rd respondent is immediate junior to the applicant and that the applicant and third respondent belong to the same cadre is not disputed in this O.A. As already pointed out even though the applicant had been promoted with effect from 27.3.1979, as he was availing earned leave he could not join the post soon after ~~the~~ receiving the promotion order to the post of Scientific Assistant. As the applicant was on earned leave, the 3rd Respondent who is ^{The} immediate junior to the Applicant had been promoted on officiating basis to the post of Scientific Assistant with effect from 14.5.1979. ~~(As already pointed out the applicant had been regularly promoted as Scientific Assistant and he had joined the post with effect from 29.3.1979. Even though the applicant was promoted as Scientific Assistant with effect from 29.3.1979. So while the applicant was on leave in spite of his promotion orders the 3rd Respondent has already pointed out that he had been promoted on officiating basis).~~ The pay of the 3rd Respondent in the promotional post which he was officiating had been fixed with effect from 14.5.1979 whereas the pay of the applicant in the regular promotion post had been fixed with effect from 17.7.1979 ~~(So the applicant is even though senior to 3rd Respondent, as he~~

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~~had joined promotional post later (post of Scientific Assistant), the pay of the applicant had been fixed lower than that of the 3rd Respondent.~~ It is under these circumstances that anomaly has arisen in the pay of the applicant vis-a-vis the 3rd Respondent though the applicant ^{is} ~~had been~~ senior to ~~that of~~ 3rd Respondent.

As already pointed out the fact that the promotion of the applicant with effect from 29.3.1979 had been on regular basis and that the applicant had joined the said promotional post on 17.9.1979 under the circumstances indicated above is not in dispute. As a matter of fact the competent authority had permitted the applicant to avail his earned leave from 25.3.1979 to 16.7.1979, even though the applicant had been promoted to the higher post of Scientific Assistant ^{W.O.F 29-3-79}. The applicant as had been on leave could not join the said post either on 29.3.1979 or soon after ~~the~~ 29.3.1979 or prior to 14.5.1979 or on 14.5.1979 on which the date the 3rd Respondent had been promoted on officiating basis. We see no latches on the part of the applicant in not joining the post either on 23.9.1979 ^{or on 14.5.79} ~~on 23.9.1979~~ before 14.5.1979.

The fact that the 3rd Respondent had been regularised in the post of Scientific Assistant with effect from 20.2.1980 is admitted by the Respondents during the course of hearing of this O.A. As the applicant in all respects is senior to the 3rd Respondent and as the said anomaly in the pay of the applicant vis-a-vis 3rd Respondent had arisen, In view of the circumstances narrated above, we are of the opinion that the said anomaly has to be removed by stepping up the pay of the applicant to that of the 3rd Respondent at least with effect from 20.2.1980 on which ~~the~~ ^{is} date the services of the third Respondent in the promotional post of Scientific Assistant had been

T.C. *[Signature]*

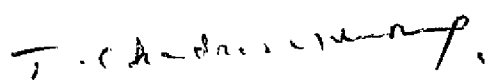
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regularised. Such stepping of pay of the applicant equal to the 3rd Respondent is necessary and essential bearing in mind the principle that the pay of senior cannot be less than that of his junior.

Mr. Shetty, learned Counsel for the Respondent raised the plea of limitation in this case. Salary and allowances as well as pension are payable to employee while in service month after month. To receive salary or pension is a recurring right. That being so, the cause of action to claim the amount arises from month to month. So in view of this position we are of the opinion that this O.A. is not barred on the point of limitation. Bearing in mind the provisions of Section 21 of the Administrative Tribunals Act which deals with limitation, it will be appropriate to give directions to the respondent to fix the pay of the applicant notionally with effect from 28.2.1980 on par with his immediate junior who is third Respondent herein and pay the arrears if any for a period of one year prior to filing of this O.A. This O.A. is filed on 5.2.1992. Hence the arrears are to be restricted and paid to the applicant for only one year prior to 5.2.1992. Hence this O.A. is liable to be allowed accordingly.

Hence we direct the respondents to fix the pay of the applicant on par with his junior with effect from 28.2.1980 on notional basis with all consequential benefits ^{and to} pay the arrears from 5.2.1991 only. Parties ^{are} directed to ^{be} pay their own costs.


(T. Chandrasekhara Reddy)
Member (J).